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Attention: Nancy Morris, Secretary

February 28, 2006

File No. S7-12-05 – Termination of a Foreign Private Issuer's Registration of a Class of Securities under Section 12(g) and Duty to File Reports under Section 15(d) of the Securities Exchange Act of 1934, Release No. 34-53020; International Series Release No. 1295

Ladies and Gentlemen:

We are submitting this letter in response to the request of the U.S. Securities and Exchange Commission (the "**Commission**" or "**SEC**") for comments in respect of the Commission's proposal (the "**Proposal**") to amend the rules allowing a foreign private issuer to terminate the registration of a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 (the "**Exchange Act**"), and thereby to no longer file reports required as a result of registration, and to cease its reporting obligations regarding a class of equity or debt securities under Section 15(d) of the Exchange Act. We represent European foreign private issuers that may be eligible to avail themselves of the final rules enacted by the Commission (the "**Final Rules**"), as well as global financial institutions that advise a wide range of foreign private issuers on the structuring of their capital raising transactions. We regularly advise these clients on the application of the U.S. federal securities laws, including with respect to their assessments regarding the costs and benefits associated with entering, or with advising their clients to enter, the registration and reporting regime under the Exchange Act.

We strongly support the Commission's efforts to rationalize and liberalize the current deregistration regime, without compromising the protection of U.S. investors. The Proposal is an improvement compared to the long-outdated deregistration regime that exists currently, and would correct some of the most troublesome aspects of the current rules governing deregistration. We have observed in our business that notwithstanding the significant increases in foreign companies with Exchange Act reporting obligations and New York Stock Exchange listings over the period 1985-2004 outlined in the Proposal, the current rules governing the "exit" by foreign private issuers from the Exchange Act registration and reporting regime, among other things, discourage many non-U.S. companies from entering such regime and their financial advisors from advising them to so enter.

While we believe that the Proposal improves the existing rules, we also believe that the Proposal, and any amendment to the current deregistration and reporting regime reflected in the Final Rules, will only be successful if it or they allow a reasonable number of foreign private issuers to take advantage of a revised exit regime. Otherwise the "trap", whereby foreign private issuers have found it difficult or nearly impossible to definitively exit the Exchange Act registration and reporting regime, will continue to deter new listings by foreign private issuers in the United States, which would disadvantage U.S. investors.

On the basis of the information and experience that we have gained through our representation of foreign private issuers and our practice under the Exchange Act, we are concerned that the Proposal, as currently structured, would not enable a significant number of foreign private issuers to exit the registration and reporting regime and thus would not remove a major disincentive to initial registration. We believe that if the Commission were to address the following points, its Final Rules would improve the Proposal and significantly further the Commission's objectives in making the Proposal.

We understand that the European companies associations that have been working with the objective of liberalizing the deregistration rules have submitted or will shortly submit a comprehensive comment letter on the Proposal. We are generally familiar with the content of this letter and the accompanying technical analysis and support the positions expressed therein.

(A) The Commission should modify the Proposal to reduce the impact of high U.S. shareholder concentration when calculating the percentage of a foreign private issuer's worldwide public float held by U.S. residents.

Sections (a)(4) and (a)(5) of proposed Rule 12h-6 would permit a foreign private issuer seeking to deregister a class of equity securities to meet one of a set of quantitative conditions designed to measure the relative level of U.S. market interest in that issuer's equity securities, based on the percentage of the class of equity securities held by U.S. residents. In determining whether U.S. shareholders hold more than 10% or 5% (depending on which test is used) of a company's worldwide public float, all unaffiliated shareholders are counted under the Proposal, including both retail and institutional shareholders. Many large U.S. institutional shareholders have significant positions in large foreign companies, particularly in Europe, typically acquired directly on the home market exchanges of those companies as home country securities markets have themselves become more internationalized and large institutional shareholders have increasingly purchased directly on such markets.

Based on our experience and anecdotal information that we have received from several of our clients, we believe that in many cases, a small number of large U.S. institutional shareholders hold substantial stakes in foreign private issuers with Exchange Act registration and reporting obligations, while ownership among remaining U.S. investors is widely dispersed and relatively small. By way of illustration, after publication of the Proposal we informally contacted some of our European clients who are registrants under the Exchange Act to assess the level of concentration of shareholding in the hands of large U.S. institutional investors and also reviewed relevant beneficial ownership reports on Schedule 13G under the Exchange Act. Although analysis of beneficial ownership for such clients for the year ended December 31, 2005 is ongoing and our conclusions are only estimates and are preliminary, a single large institutional shareholder of one such client held as of the last date of measurement over 10% of such client's outstanding share capital (without excluding the shareholding of the company's affiliates (which are not U.S. residents) as would be required under the Proposal).[1] For another of our clients, of an estimated 13% shareholding by U.S. residents (such percentage again estimated without excluding affiliate shareholders (which also are not U.S. residents)), ownership of substantially all of the registrant's American Depositary Shares ("**ADSs**") were concentrated in the hands of four large institutional holders, and approximately half of the ordinary shares held by U.S. residents in the home market (in the form of ordinary shares rather than ADSs) were held by four large institutional holders. These examples illustrate that a very small number of U.S. shareholders may unduly affect the proportion of a company's worldwide public float held by U.S. residents. Our cross-border transactional experience, particularly in the context of tender and exchange offers and rights issues, reinforces our belief that the U.S. institutional shareholder concentration phenomenon described above is in fact widespread among European corporates. Consequently, the inclusion in the Proposal of U.S. institutional shareholders in the worldwide public float calculation is likely to significantly compromise the objectives of the Proposal.

In further pursuit of the objectives of the Proposal, we therefore recommend excluding U.S. "qualified institutional buyers" ("**QIBs**") as defined in Rule 144A under the Securities Act of 1933 (the "**Securities Act**") in the United States from the calculation of a foreign private issuer's U.S. shareholder base under the benchmarks to be contained in the Final Rules. We believe that such an exclusion would be consistent with the long history under the Securities Act of treating investors "able to fend for themselves" differently from other members of the investing public.[2] Similarly, large institutional investors are sometimes accorded different treatment from retail investors under the Exchange Act, for example, under each of Regulation M and Rule 15a-6 under the Exchange Act.

In the alternative, if an exclusion of QIBs in the United States from the calculation is unacceptable to the Commission, we recommend that the Commission adopt any one of a number of alternatives that would permit a reasonable number of foreign private issuers to exit the Exchange Act registration and reporting regime. These might include:

- exclusion of a class of "major" institutional investors or "super" QIBs;[3]
- allowing foreign private issuers to eliminate from the calculation of the benchmarks
  - a certain number (e.g., the top ten) of their largest U.S. shareholders, or
  - any U.S. shareholder holding over a certain amount (e.g., $10 million) of its equity securities; or
- raising the 5% and 10% U.S. residency tests (depending on which of the public float benchmarks are used) to 15% and 25%.

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[1] Just over half of the shareholding is identified as being held by an affiliate of the shareholder with a registered address outside the United States.

[2] *See SEC v. Ralston Purina Co.*, 346 U.S. 119 (1953), where the Supreme Court clarified the scope of the private offering exemption under the Securities Act by holding that "[T]he applicability of [the private placement exemption] should turn on whether the particular class of persons affected needs the protection of the [Securities] Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering.'" In *Ralston Purina* the Supreme Court also noted that, "The focus of inquiry should be on the need of the offerees for the protections afforded by registration."

[3] These could be defined to include, for example, major fund management groups in the United States and major U.S. pension fund investors, by reference to thresholds that are higher than those used in the definition of QIBs under the Securities Act.

While a 25% threshold would, in our estimation, permit a reasonable number of foreign private issuers to deregister, we note that a 20% threshold would be consistent with the definition of "substantial U.S. market interest" ("**SUSMI**") in Regulation S under the Securities Act. Under that definition, there cannot be SUSMI for equity securities if U.S. markets do not constitute the largest market for the issuer's equity securities and less than 20% of trading in the issuer's equity securities takes place on U.S. markets.

While we believe that any of these revisions would assist the Proposal in achieving the Commission's objectives, we encourage the Commission to adopt a revision that has the virtue of simplicity for foreign private issuers applying the test. It has been our experience in our cross-border practice that many foreign private issuers have found the calculation of U.S. ownership under Rule 800(h) under the Securities Act and Rules 14d-1(c) and (d) under the Exchange Act to be too complicated and not commercially practicable in a transactional setting. The counting method thereunder has had the effect of dissuading foreign private issuers from using the relief afforded by the Commission's rules on Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, and consequently excluding U.S. shareholders from transactions covered by such rules.[4]

(B) The threshold of 300 persons on a worldwide basis or 300 U.S. residents contained in the Alternative Threshold Record Condition should also be revised to permit a reasonable number of foreign private issuers to deregister.

We support the Commission's statements in the Proposal that the new exit rules for foreign private issuers should be no more rigorous than the current rules and therefore support the inclusion of the alternative threshold record condition of proposed Rule 12h-6(a)(6). However, we do not agree that the number of holders should remain at 300, a threshold that was established over 40 years ago and which the Commission has acknowledged is too easily exceeded. Therefore, the alternative threshold record condition should also be established at a level that would permit a reasonable number of foreign private issuers to deregister, for example, at 3,000.

(C) The Commission should clarify whose shares need to be counted for purposes of determining the public float benchmark.

For purposes of assessing compliance with sections (a)(4) and (a)(5) of proposed Rule 12h-6 and determining the percentage of a foreign private issuer's worldwide public float held by U.S. residents, the issuer must count all equity securities held by its "non-affiliates" on a worldwide basis. This qualitative standard regarding which shareholders shall be included in such determination (i.e., any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the issuer) adds unnecessary uncertainty to the application of the determination of worldwide public float, and risks adversely affecting the use of the Final Rules. In order to avoid the uncertainty and ambiguity inherent in this standard (which must be made based on all the facts and circumstances), we propose that the Commission establish a non-exclusive safe harbor that clearly articulates those shareholders who shall not be deemed "affiliates", and consequently whose shareholding need not be counted in the determination of public float under Rule 12h-6. Specifically, we suggest establishing that any shareholder that is not an officer or director and

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4 See "Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings", SEC Release No. 33-7759 (the "**Cross-Border Rules**"). We would also urge the Commission to review the methodology for calculating U.S. ownership under the Cross Border Rules more generally at a future date.

that does not beneficially own more than 20% of a foreign private issuer's shares, as well as any institutional investor whose beneficial ownership report does not indicate that it intends to influence the management of the company, should not be deemed "affiliates" for purposes of sections (a)(4) and (a)(5) of proposed Rule 12h-6.

(D) The one-year dormancy condition should apply only to registered U.S. public offerings.

With some exceptions, Section (a)(2) of proposed Rule 12h-6 would require a foreign private issuer seeking to deregister a class of equity securities not to have sold any securities in an offering registered or unregistered under the Securities Act in the United States during the preceding 12 months, before it can terminate its Exchange Act reporting obligations regarding such class of equity securities. While the prohibition of this "one year dormancy condition" would not extend to offerings under Regulations S under the Securities Act, a foreign private issuer seeking to avail itself of the liberalized regime proposed by the Proposal could not access the U.S. capital markets during the one year dormancy period by means of a Section 4(2), Rule 144A, Rule 801 or Rule 802 placement. We believe that the consequences of including such unregistered offerings within the prohibition will harm U.S. investors by causing them to be excluded in their entirety from these types of offerings, such as, for example, in a typical European rights offering where companies are obligated to extend subscription rights to their shareholders and do so frequently in the United States by means of a Section 4(2) private placement (including in circumstances where Rule 801 cannot be determined to be available).[5] This outcome is not consistent with the Commission's previously stated goals of encouraging foreign private issuers to include U.S. holders on an equal basis with foreign security holders.[6]

Moreover, the Commission should recognize that one of the consequences of the internationalization of the global securities markets is that QIBs eligible to purchase in U.S. private placements or Rule 144A offerings often have offshore affiliates that can easily purchase and hold their securities offshore-the-United-States in offerings conducted in accordance with Regulation S under the Securities Act. It seems likely to us that one of the consequences of the Proposal would be that foreign private issuers wishing to preserve their ability to avail themselves of the new deregistration regime would structure their offerings to sell to institutional investors holding their investments offshore. We respectfully suggest that causing large institutional investors to hold their investments in London, for example, rather than in the United States serves no regulatory purpose of the Commission. Moreover, as noted above, many QIBs often have offshore affiliates that can purchase and hold their investments with equal facility in Regulation S compliant offerings wholly outside the United States and Regulation S compliant offerings are proposed to be excluded from the prohibition of the one year dormancy condition. This being the case, we believe that if excluding U.S. private placements and Rule 144A offerings from the prohibition of the one year dormancy period of Section (a)(2) of Rule 12h-6 would act as a disincentive for foreign private issuers to conduct U.S. registered public offerings it would do so only marginally. Finally, it should also be noted that the simplification of the Securities Act registration process recently enacted by the Commission as part of its securities offering reform has

In fact, Rule 801 is often not available because, as described in comment (A) above, there is often a concentration of U.S shareholders that own low or high single digit percentages of shares which, when aggregated, exceed the 10% threshold of Rule 801.

6 See, for example, the Cross-Border Rules and "Amendments to the Tender Offer Best-Price Rule", SEC Release No. 34-52968

eliminated many of the disincentives to registered public offerings, and that if the Commission were to reform the requirements arising out of Section 404 if the Sarbanes-Oxley Act of 2002, and particularly Auditing Standard No. 2 as promulgated by the Public Company Accounting Oversight Board, we believe this would have a far more significant impact on encouraging foreign private issuers to return to (and remain in) the U.S. public markets.

(E) The proposed modification to Rule 12g3-2(b) should be extended to companies with reporting obligations that arise from business combinations with other companies that are themselves registered with the Commission.

Under current Rule 12g3-2(b), a foreign private issuer that has never incurred a registration obligation under the Exchange Act may avoid Section 12(g) registration if it establishes and maintains the exemption by submitting to the Commission various materials (or English version thereof) that are made public in its home market. The exemption is currently not available to foreign private issuers who have issued securities to acquire by merger or similar transaction an issuer that had securities registered under Section 12 of the Exchange Act or a reporting obligation, suspended or active, under Section 15(d) of the Exchange Act (other than certain transactions registered by Canadian issuers).

While proposed Rule 12g3-2(e)(1) modifies Rule 12g3-2(d)(i) to effectively make deregistration permanent for companies with reporting obligations that arise only from U.S. public offerings or listings once the conditions for deregistration are met, the same is not true for companies with reporting obligations that arise from business combinations with other companies that are themselves registered with the Commission. We do not believe that any regulatory interest is served by distinguishing in terms of eligibility to permanently deregister among foreign private issuers based on the type of transaction that caused them to become subject to the Exchange Act's registration and reporting regime. Accordingly, we believe that the Commission should make the same modification to Rule 12g3-2(d)(ii) as it has made for Rule 12g3-2(d)(i). Moreover, any concern that the Commission may have that the transaction pursuant to which a foreign private issuer seeking to deregister becomes a registrant was not subject to the proxy rules of Regulation 14A and 14C of the Exchange Act should be mitigated by the same "balance of prudence" that the Commission articulated in the Proposal to justify the two year reporting condition of proposed Rule 12h-6(a)(1). When a company is obligated to maintain its Exchange Act registration for two years after it registers its securities under the Exchange Act, it should not matter that such a company became an Exchange Act registrant and reporting company through a business combination.

Moreover, the Commission should clarify, in Rule 12g3-2 or in the "successor registrant" Rule 12g-3 under the Exchange Act, that when securities that are not already registered under Section 12 of the Exchange Act are issued to holders of securities that are registered under Section 12 of the Exchange Act in a business combination, the class of securities so issued shall only need to be registered if the company issuing the securities would, upon completion of the business combination, fail all of the public float and trading volume benchmarks and the alternative threshold record condition of proposed Rule 12h-6. This would address the situation where such a company would issue securities in a business combination that is exempt from the registration requirement of the Securities Act, and would nevertheless be obligated to register for two years under the Exchange Act even if it met the deregistration criteria upon completion of the business combination.

(F) The term "well-known seasoned issuer" should be replaced by the term "equity WKSI" or "equity well-known seasoned issuer" to designate well-known seasoned issuers that meet the equity prong of the definition of well known seasoned issuer.

Proposed Rule 12h-6(d)(8) would define a well-known seasoned issuer for purposes of Rule 12h-6 as a well-known seasoned issuer who meets the requirements of paragraph 1(i)(A) of the definition of that term in Rule 405 under the Securities Act. To avoid confusion, we recommend that the Commission use a term such as "equity well-known seasoned issuer" or "equity WKSI" to designate the narrower concept.

(G) Proposed Rule 12g3-2(e) should be revised to set a reasonable time limit on the obligation to publish home country documents in English on a company's website.

While we agree that it is appropriate for a foreign private issuer who has deregistered to provide U.S. investors access to home country materials in English after termination of its reporting under proposed Rule 12h-6, and that in practice most such issuers already do so or would do so irrespective of Rule 12g3-2(e), we believe that an obligation to do so indefinitely is inconsistent with the ability to permanently exit the Exchange Act registration and reporting regime. Accordingly, we recommend the Commission set a reasonable time limit on such an obligation.

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We would like to reiterate and emphasize our support for the objectives the Commission is seeking to achieve through the Proposal. We hope that the Commission will regard our comments as constructive, and we look forward to the rapid adoption of the Final Rules.

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We would be pleased to respond to any enquiries regarding this letter or our views on the Proposal generally. Please contact Edward H. Fleischman (212-903-9011) or Jeffrey C. Cohen (212-903-9014) in our New York office, Thomas N. O'Neill, III (+33 1 56 43 58 82) in our Paris office or Lawrence Vranka, Jr. (+44 207 456 3481) in our London office.

Very truly yours

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